

30. API's response to the Draft Final Report, dated August 23, 1996, pointed out that many areas of the public and private sectors require expanded spectrum allocation and public safety agencies are certainly not the least of the needy. API cautioned, however, that the recommendation regarding the refarmed spectrum is not realistic -- not only from the viewpoint of other spectrum demands, but from the enormous frequency coordination challenges that would flow from the interleaving of the new channels with existing private operations.

31. Despite API's concern, PSWAC's Final Report, which was released on September 11, 1996, included the same recommendation that refarmed spectrum be made available to public safety licensees on an exclusive basis.^{21/} API reiterates that from a practical coordination and operational point of view, new channels situated adjacent to existing public safety channels should remain in the public safety allocation; and, likewise, new channels derived from the industrial radio service allocation should remain available for industrial users including Public Service entities. Rather than reserving all newly refarmed channels for public safety licensees, the Commission should encourage public service and other licensees to transition to

^{21/} Final Report, Sections 2.2.2.3 and 4.4.16.

narrowband equipment by rewarding them with some or all of the newly created channels.

32. The FCC is making fewer channels available for actual use. For example, the Commission has recently frozen 800 MHz General Category licensing and is threatening to relocate non-SMRs from those channels. API strongly urges the FCC to recognize that more spectrum, not less, is needed for public services providers.

33. In its Final Report, PSWAC seeks both new channels in the 470-512 MHz band in all areas as well as eventual reallocation of all TV sharing channels in the 470-512 MHz band.^{22/} API members currently utilize spectrum in the 470-512 MHz band for land mobile radio uses which are critical to safe and effective day-to-day operations and as contingency channels in the event of an emergency. API adamantly opposes any suggestion to reallocate this spectrum from public service users. In addition, API believes that any new spectrum allocations in the VHF band should include public service providers. In this way, the Commission will ensure the ability of both public service and public safety licensees to continue to protect the general public as well as their own workforce.

^{22/} PSWAC Final Report at Section 4.4.16.

34. API encourages the FCC and NTIA to actively explore all other avenues for realistic public safety and public service frequency relief. By including public service providers in the provision of new spectrum for public safety licensees, the Commission would further the overall goal of increased public safety.

J. Public Service Providers Should be Exempt from Auctions

35. Although the FCC does not currently have authority to auction spectrum utilized by non-commercial providers, API urges the FCC to nonetheless encourage public service licensees to continue to invest in new communications systems which protect public safety and the environment. The primary method by which the FCC could encourage such large-scale investment is to declare that auctions will not be used in the future as a means of licensing spectrum to public safety and public service entities because they protect the public and environment. Public service licensees would be willing to invest in a communications system that would ensure public safety. However, public service and public safety entities should not be penalized by being required to buy spectrum for a telecommunications system which is necessary to fulfill the entities public safety obligations.

III. CONCLUSION

36. The Commission and the communications industry stand together at the precipice of a great divide between the current and future state of public safety communications. The bridge that they build to the future must be strong enough to carry a multitude of different providers of public safety services. Police, fire, and ambulance services will need to interact with pipelines, refineries, utilities, and railroads. As the nation's economy continues to expand over time, private entities that are charged with protection of the public's safety and the environment must be able to keep pace with that economic expansion without sacrificing their public service obligations. Accordingly, additional spectrum will be needed for public safety and public service providers as our nation continues to grow.

37. Interoperability should be a key component to the utilization of new spectrum. The FCC should phase in new interoperability standards by reallocating a significant portion of government spectrum for exclusive public safety and private service use and by requiring users of that new spectrum to employ interoperable equipment on new channels.

38. The Commission should assure public safety and public service providers that, unless specifically required by Congress, the FCC will not in the future auction licenses in the public safety and public service categories. If necessary, user fees are a more appropriate means of generating revenue from entities that expend their own resources to protect the public and environment.

WHEREFORE THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and strongly urges the Federal Communications Commission to proceed in this matter in a manner fully consistent with the views expressed herein.

Respectfully submitted,

THE AMERICAN PETROLEUM INSTITUTE

By: Wayne V. Black
Wayne V. Black
John Reardon
Paula Deza
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4130

Its Attorneys

Dated: October 21, 1996